

OPEN MEETING ITEM



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COMMISSIONERS  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

ORIGINAL



ARIZONA CORPORATION COMMISSION

2007 MAY 18 P 3:15

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AZ CORP COMMISSION  
DOCKET CONTROL

DATE: MAY 18, 2007

DOCKET NO: W-01452A-06-0449

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

CAVE CREEK WATER COMPANY  
(EXTENSION OF CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MAY 29, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JUNE 5, 2007, AND JUNE 6, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission  
**DOCKETED**

MAY 18 2007

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BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON - Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF  
9 CAVE CREEK WATER COMPANY FOR AN  
EXTENSION OF ITS EXISTING CERTIFICATE  
OF CONVENIENCE AND NECESSITY.

DOCKET NO. W-01452A-06-0449

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

10 DATE OF HEARING: November 30, 2006, December 12, 2006 and  
February 27, 2007

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

13 APPEARANCES: Mr. Timothy Sabo, ROSHKA, DeWULF &  
14 PATTEN, on behave of Cave Creek Water  
15 Company;

16 Mr. Marvin S. Cohen, SACKS TIERNEY P.A.,  
17 on be half of the Town of Cave Creek and Desert  
Hills Water Company; and

18 Mr. Kevin Torrey, Staff Attorney, Legal  
19 Division, on behalf of the Utilities Division of  
the Arizona Corporation Commission.

20 **BY THE COMMISSION:**

21 \* \* \* \* \*

22 Having considered the entire record herein and being fully advised in the premises, the  
23 Commission finds, concludes, and orders that:

24 **FINDINGS OF FACT**

25 1. On July 6, 2006, Cave Creek Water Company ("CCWC" or "Cave Creek" or  
26 "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for an  
27 extension of its Certificate of Convenience and Necessity ("Certificate" or "CC&N").

28 2. CCWC's application requested extension of its CC&N to add approximately 14,086

1 additional acres in Maricopa County; however, CCWC had requests for service for less than 360  
2 acres. Additionally, the majority of the land included in the extension area is owned by the State  
3 Land Trust Department ("State Land") and county park.

4 3. On September 20, 2006, the Commission's Utilities Division ("Staff") filed a  
5 Sufficiency Letter in this docket indicating that the Applicant's application had met the sufficiency  
6 requirements as outlined in the Arizona Administrative Code.

7 4. On October 3, 2006, by Procedural Order, the hearing in this matter was set to  
8 commence on November 30, 2006 and other procedural deadlines were established.

9 5. On October 24, 2006, the Town of Cave Creek ("Town") filed an Application to  
10 Intervene in this matter. The Town stated that it had an interest in this proceedings because the Town  
11 expected to acquire and take possession of CCWC through a condemnation case filed on April 6,  
12 2005, in Maricopa County Superior Court, Cause No. CV2005-005882.

13 6. Further, the Town's application to intervene stated that the Town objected to the  
14 extension of CCWC's CC&N to include state lands and to any property for which there was not a  
15 request for service because there is no current need for water service in the state land areas or in the  
16 areas for which requests for service have not been made.

17 7. On October 25, 2006, CCWC filed its affidavits of mailing and publication.

18 8. On October 27, 2006, Staff and the parties of record filed a stipulation requesting that  
19 the time for Staff to file its Staff Report be extended and the time for the parties to file their responses  
20 be extended.

21 9. On October 31, 2006, Desert Hills Water Company, Inc., ("DHWC") filed a  
22 Application for Leave to Intervene. DHWC's application stated that it is located immediately  
23 adjacent to the state land areas that CCWC is seeking to add to its service area. The application also  
24 stated that the western boundary of CCWC's service area has been 24<sup>th</sup> street; service to the areas  
25 west of 24<sup>th</sup> street has generally been provided by DHWC and through CCWC's extension  
26 application it would be seeking to add seven square miles west of 24<sup>th</sup> street to its service area with  
27 no requests for service.

28 10. On November 13, 2006, a Procedural Order was issued granting DHWC and the

1 Town's requests for intervention, extending the time for the filing of Staff's Staff Report, and the  
2 time for the parties to respond.

3 11. On November 17, 2006, Staff filed its Staff Report and recommended the Commission  
4 grant CCWC an Order Preliminary because CCWC did not have sufficient storage for current and  
5 future customers. Additionally, Staff recommended extending CCWC's CC&N to include only those  
6 areas where there were requests for service and into the areas where CCWC is currently serving  
7 customers outside its CC&N.

8 12. Staff's Report also noted that due to the on-going condemnation proceedings with the  
9 Town, Staff believed it was not an appropriate time to extend a CC&N into areas for which there  
10 were no requests for service. Further, Staff's Report pointed out that a letter from the State Land  
11 Department stated there would not be a need for water service in the proposed extension area for five  
12 years.

13 13. On November 27, 2006, Cave Creek filed its Response to Staff Report. The response  
14 stated that CCWC believed it had requests for service or their recognized equivalent for 75 percent of  
15 the proposed extension area. Additionally, CCWC stated that it believed Staff's concerns about  
16 storage were overstated and that Staff's calculations failed to take into account CCWC's wells or its  
17 ability for an emergency interconnection with Carefree Water Company.

18 14. On November 30, 2006, a full public hearing commenced, but was not completed.

19 15. On December 8, 2006, by Procedural Order, the hearing was scheduled to continue on  
20 December 12, 2006.

21 16. On December 12, 2006, the hearing reconvened and the parties informed the  
22 Administrative Law Judge that the parties anticipated settling the issues in this matter. Additionally,  
23 the parties requested that the hearing be continued to give the parties time to reach an agreement.

24 17. By Procedural Order issued on January 11, 2007, the hearing was continued to  
25 February 27, 2007.

26 18. On February 26, 2007, CCWC filed a Motion to Continue the hearing for an additional  
27 30 days, stating that the CCWC, DHWC and the Town were continuing settlement negotiations and  
28 that Staff had no objection to the continuance.

1        19.    On March 1, 2007, by Procedural Order, a continuance was granted rescheduling the  
2 hearing to reconvene on March 29, 2007.

3        20.    On March 27, 2006, a telephonic procedural conference was held with counsel for  
4 Staff, CCWC, DHWC and the Town. The parties informed the Hearing Division that a settlement  
5 agreement had been reached. The parties also requested that the hearing scheduled for March 29,  
6 2007, be vacated.

7        21.    On March 29, 2007, by Procedural Order, the hearing in this matter was continued  
8 indefinitely. The Procedural Order also directed CCWC, DHWC and the Town to docket a copy of  
9 the fully executed settlement agreement on or before April 16, 2007. Additionally, Staff was directed  
10 to file a response to the settlement agreement and to make recommendations on the procedural  
11 posture of this matter on or before April 30, 2007. The Procedural Order also extended the timeclock  
12 accordingly.

13       22.    On April 16, 2007, CCWC filed a Request for Administrative Closure of this docket  
14 and attached a copy of the Stipulated Final Judgment in Condemnation and the Stipulated Order for  
15 Immediate Possession.

16       23.    On April 23, 2007, Staff filed a Memorandum recommending that Docket Control  
17 administratively close the docket in this matter and that CCWC's CC&N be cancelled because the  
18 Town has taken sole use, possession and ownership of all plant, system and business of CCWC,  
19 pursuant to the Stipulated Order issued by the Maricopa County Superior Court (Cause No. CV2005-  
20 005882).

21       24.    We find that the Stipulated Final Judgment in Condemnation and the Stipulated Order  
22 issued by the Maricopa County Superior Court (Cause No. CV2005- 005882) condemns the assets  
23 and real property of CCWC by the Town. Accordingly, we find it reasonable, as Staff recommends,  
24 to cancel CCWC's CC&N.

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**CONCLUSIONS OF LAW**

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1. Cave Creek is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-285.
2. The Commission has jurisdiction over Cave Creek Water Company and the subject matter of the application.
3. Notice of the application was provided as required by law.
4. The Stipulated Final Judgment in Condemnation issued by the Maricopa County Superior Court condemned the assets and real property of Cave Creek Water.
5. It is appropriate that Cave Creek Water Company's CC&N be cancelled.
6. Staff recommendation in Findings of Fact No. 23 should be adopted.

**ORDER**

IT IS THEREFORE ORDERED that the Certificate of Convenience of Necessity of Cave Creek Water Company is hereby cancelled.

IT IS FURTHER ORDERED that Docket Control shall administratively close the docket in this matter.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2007.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

YBK:db

1 SERVICE LIST FOR:

CAVE CREEK WATER COMPANY

2 DOCKET NO.:

W-01452A-06-0449

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4 Michael W. Patten  
5 ROSHKA, DeWULF & PATTEN  
6 One Arizona Center  
7 400 East Van Buren Street, Ste. 800  
8 Phoenix, AZ 85004  
9 Attorneys for Cave Creek Water Company

7 Marvin S. Cohen  
8 Stephen J. Anthony  
9 SACKS TIERNEY P.A.  
10 4250 N. Drinkwater Blvd., 4<sup>th</sup> Floor  
11 Scottsdale, AZ 85251-3647  
12 Attorneys for the Town of Cave Creek and  
13 Desert Hills Water Co.

11 Christopher Kempley, Chief Counsel  
12 Legal Division  
13 ARIZONA CORPORATION COMMISSION  
14 1200 West Washington Street  
15 Phoenix, AZ 85007

14 Ernest G. Johnson, Director  
15 Utilities Division  
16 ARIZONA CORPORATION COMMISSION  
17 1200 West Washington  
18 Phoenix, AZ 85007

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